ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

-against-

931536 ONTARIO INC. ET AL

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R E A S O N S F O R J U D G M E N T & S E N T E N C I N G

BEFORE THE HONOURABLE JUDGE B. KAZAN,
on April 30, 1993, at TORONTO, Ontario.

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CHARGES: Possession and Sale of Obscene Material

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APPEARANCES:

P. Metzler, Esq. Counsel for the Crown

K. Tatulis, Esq. Counsel for the Accused

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Courtroom 102
Old City Hall

R E A S O N S F O R J U D G M E N T

KNAZAN, B. Prov.Ct.J. (Orally)

Count one against 931536 Ontario Incorporated and Dimitrios Stefanou is dismissed.

931536 Ontario Incorporated, Mr. Stefanou, Mr. Kryiazoglov, Mr. Tsetsekas, and Mr. Delavinias are found guilty of count two.

931536 Ontario Incorporated and Dimitrios Stefanou are charged that on or about the 24th day of October, in the year, 1991, at the Municipality of Metropolitan Toronto, in the Toronto Region, knowingly, and without lawful justification or excuse, did sell obscene material, to wit: The motion pictures recorded on the videotape cassette titled, Traci Lords is Aroused, contrary to the Criminal Code.

And further, the said 931536 Ontario Incorporated and Dimitrios Stefanou, Vasel Kyriazoglov, Bill Tsetsekas, and Chris Delavinias, on or about the 24th day of October, in the year, 1991, at the Municipality of Metropolitan Toronto, in the Toronto Region, knowingly, and without lawful justification or excuse, did have in their possession for the purpose of selling obscene material, to wit: The motion pictures recorded on videotape cassettes titled, Loving Lips, Cherry Tricks, Beauty and the Beast, Teach Me to Suck, Hotel Transylvania II, N.F.G., French Passions, Mondo New York, Talk Dirty to Me Part II, contrary to the Criminal Code.

Section 163(2)(a) of the Criminal Code reads as

follows: "Everyone commits an offence who knowingly, without lawful justification excuse, sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever."

Section 163(8) reads, "For the purpose of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

The alleged obscene pictures are eight video films. Exhibit One, Traci Lords is Aroused, was sold and is the basis for count one. The other videos were in the possession of the defendants when a seizure was made. The videos, the testimony of an officer who made the purchase and then watched the movies after seizure, and certificates or records of classification of each film by the Ontario Film Review Board make up all of the evidence.

Of the eight films, one, Mondo New York, does not exploit sex. All the sex in it takes place in apparently real places in New York City, and is shown as part of what a young woman exploring the City sees. Crown Counsel conceded that it should be dealt with differently than the other seven movies and that it is not obscene. I agree.

I can draw general conclusions which apply to the other seven movies presented in evidence which narrow the issues.

The other seven movies all exploit sex: they are about nothing other than sex and consist almost entirely of sexual activity. They do not depict sex combined

with horror, violence or crime, and there are no children. Some of them suggest violence in ways which I shall explain, but none of them have crime, horror, cruelty and violence and sex as their dominant characteristics so as to be deemed to be obscene under the second part of Section 163(8). The Crown does not argue that they do.

Since the dominant characteristic of each movie is the exploitation of sex, I must determine whether or not it is undue.

One further general comment applicable to all of the movies is that they all show very explicit sexual activity: Intercourse, cunnilingus, fellatio, and anal intercourse. They also deal, apparently, with sexual fantasies.

The Movies

A brief discussion of each movie will demonstrate what fantasies are suggested, and at the same time, some of the objectionable material on which the Crown relies in arguing that there's undue exploitation of sex. A written summary of parts of the movie cannot convey precisely the effect of seeing it. What sounds obscene when described may not be when seen, and vice-versa.

Exhibit One is Traci Lords is Aroused. The movie consists of a woman's sexual activities, including voyeurism, and all forms of sex, sometimes with more than one person present. It is not clear what is a dream or fantasy and what really happens to her. There's no violence, but there are three slaps during

consensual sex.

Exhibit Two is Cherry Tricks. There are no violent or degrading sexual acts, but many forms of explicit sex, including ejaculation on the mouth and face. There is a dominant theme to the movie, and that is that women are only able to advance in the modelling or acting field by having sex with male employers.

The opening scene amounts to a sexual assault under Section 271 of the Criminal Code because although the sex initiated by the woman security guard is consensual, the consent is based on her mistaking the man for someone else, and the man does nothing to correct the mistake when he realizes it.

There is also an acting school in which a woman student has sex with the male teacher in order to receive a good grade, and the female student who won't have sex receives a bad grade. This movie is very sexist and very demeaning to women, and I deal with it separately.

Exhibit Three is Talk Dirty to Me Part II. The protagonist of this movie is a man, very confident of his sexual power, who has sex with almost every woman he meets. One partner is the daughter of a woman with whom he has sex. The daughter's age is not determinable; she is not a child, but the suggestion of childhood is there.

There is sex with a maid. The movie makes fun of the maid, but the sex is consensual.

There is voyeurism, and a dream by a woman of being chased by a motorcycle gang. Every woman is depicted

as a willing sex partner. There is some hair pulling, but no pain is depicted; only pleasure and consent.

The main woman character is represented as being sexually repressed. She then gradually becomes conscious of her desires and her sexuality is liberated by the man.

Some scenes may demean women, but they are not as unambiguous as Exhibit Two, and they do not dominate the movie, as in Exhibit Two.

Exhibit Four is Teach Me to Suck. This movie also shows female students sleeping with the teacher in order to improve their grades; but the movie is mainly about consensual sex between students on a field trip.

There is sex between two men and one woman, with the woman's agreement; and sex between two women. There is a collar, but nothing is really done with it.

Exhibit Five is French Passions. This movie opens with consensual lesbian sex between a student and a teacher, with the student engaging in sex to improve her grade from 69 to 96, which her sister received from the same teacher. There is then an unrelated episode of consensual lesbian sex between two women who share a dildo type apparatus with two protrusions.

Then there is another unrelated episode in which three female students stop studying, have a friendly

pillow fight, and then group sex, first, among themselves, and later, when they are joined by two male friends.

Then, a woman dressed in a short black robe, a studded collar and belt, and what appears to be a leather bikini with handcuffs hanging from the pants appears in her kitchen. She is holding a whip. She sees the garbage man arrive and goes outside to find her trash in the yard. She threatens to flog him if he doesn't clean it up, but never uses the whip or the handcuffs.

They throw trash at each other in a fight and then engage in consensual sex, including anal sex depicted as pleasurable to both of them. The man calls the woman a bitch. The woman is white and the man is black, and after sex, she smiles and says that they don't call her white trash for nothing.

Applicable Principles

In Regina versus Butler, 70 C.C.C., 129, the Supreme Court of Canada in upholding Section 163 of the Criminal Code as a justifiable limit on freedom of expression called the notion of obscenity inherently elusive and referred to the intractable nature of the problem in defining it. I agree.

I must, however, attempt to apply it as explained by the words "undue exploitation of sex" in Section 163(8) of the Code.

In Butler, the Court divided pornography into three categories. All references are to 70 C.C.C., 129.

At page 150 of the judgment, paragraph c, these categories are: "(1) explicit sex with violence, (2) explicit sex without violence but which subjects people to treatment that is degrading or dehumanizing, and (3) explicit sex without violence that is neither degrading nor dehumanizing."

In this case, except for the slaps and the threat in Exhibit Five to flog the man if he did not pick up the trash, there is no violence or threat of violence in any of the seven movies. The main issue for determination is whether or not the films fall into the second category because they show the subjection of people to treatment that is degrading or dehumanizing.

The "internal necessities" test described in Butler has no application to this case. The Defence does not allege any artistic purpose in these films.

Certain principles govern the way in which I carry out my duty to apply Section 163 of the Criminal Code to the films. They come from many cases over many years, but they are all distilled in Butler.

I must, as best as I can, determine what the community would tolerate others being exposed to on the basis of the harm that may flow from such exposure.

My own individual taste is irrelevant to the determination. The inference of harm from the materials and standard of community tolerance may be proved by evidence or by the materials themselves.

The standard of community tolerance is national, not local. In applying the inter-related tests of community tolerance and risk of harm, I rely on the

materials, themselves, the changing levels of tolerance towards unequal treatment of women reflected by laws of parliament in the provinces, and the evolving application of Section 163 to different materials by the Courts.

In arguing that all of the videos come within the second category of pornography described in Butler, Crown Counsel relies on Justice Sopinka's discussions of degrading and dehumanizing materials at page 146, paragraph h.

> "Among other things, degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity of all human beings. In the appreciation of whether material is degrading or dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading or dehumanizing scenes. Sometimes, the very appearance of consent makes the depicted acts even more degrading or dehumanizing.
>
> This type of material would, apparently, fail the community standards test not because it offends against morals but because it is perceived by public opinion to be harmful to society, particularly to women."

In referring to the material, itself, Mr. Metzler emphasizes the explicit graphic sex, that there is no erotica, and that women and people are extremely objectified. He refers to the negative characterizations of youth in Talk Dirty to Me, the breaches of trust in the student/teacher relationships, and the relationship of the psychiatrist to the patient, and the ejaculation on to the face. With respect to the ejaculation on the face, he relies on the decision

of Judge Locke of the then District Court in the Queen and Ross Wise, 294555 Ontario Limited, unreported, June 22nd, 1990, where Judge Locke found such a depiction to exceed community standards.

As I have determined that Cherry Tricks is obscene and the other six are not, I will discuss Cherry Tricks separately.

I do not find beyond a reasonable doubt that any of Exhibits One, Three, Four, Five, Six and Seven would predispose persons to act in an anti-social manner, as for example, the physical or mental mistreatment of women by men. There is no strong risk of harm. There is never sex combined with violence. There is no degradation of any man or woman in the actual sex scenes that I have described as they are presented. Exploitation of students by teachers and patients by psychiatrists is unacceptable, but these relationships are not the dominant characteristics of these movies even if I seem to have given them prominence in my summaries.

The scene between the woman and the garbage collector, which contains the whip, handcuffs and racial overtones, presents no risk of harm as presented in the film. In the scene as a whole, at least one interpretation is that the white person does not really degrade the black person, and that the man does not really degrade the woman, even though he calls her a bitch.

Crown Counsel submits that the movies show all male fantasies. I cannot conclude this without evidence

any more than I can conclude, as submitted, that there is no erotica in these movies. Evidence on behalf of either party as to what the whip, the clothing and the speech symbolize, and what part they play in real people's sexuality might have assisted.

I conclude that many people might be very offended by this scene, but I do not conclude beyond a reasonable doubt that the community would not tolerate others watching it.

In relying on the evolving application of Section 163 by the Courts, I've considered the Wise decision of Judge Locke, as well as those parts of the decision of Judge Borins in Regina versus Doug Rankine, 1983, 9 C.C.C. (3d), 53, and Justice Ferg in Regina versus Ramsingh, 1984, 14 C.C.C. (3d), 230, approved of by the Supreme Court in Butler. The exhibits in this case show none of the indignities referred to in the Doug Rankine's case. they do contain some elements in common with the general description in Ramsingh, but in none of the movies, apart from Cherry Tricks, is this the dominant characteristic.

Regarding the Wise decision, while it pre-dated Butler, as Defence Counsel argues, Judge Locke's decision on the constitutional challenge to Section 163 anticipates Butler in many respects, and the case is a useful example of applying Section 163 of the Criminal Code. Most of the films I'm dealing with resemble those materials which Judge Locke found

not to be obscene; that is they contain consenting adults indulging in sexual acts, essentially devoid of physical violence or other dehumanizing content regarding either the male sex or the female sex.

Cherry Tricks

I have left Cherry Tricks for separate discussion because its dominant theme is the degrading and demeaning treatment of women, combined with unobjectionable heterosexual and lesbian acts of sex. It raises the question of whether or not the degradation has to be in the actual sexual acts, and if not, how closely the connection must be between the degrading behaviour and the sex.

All five women in the movie are treated as stupid, with no skills or ability, except in sex. They are required to and are prepared to have sex with men who are either their employers, acting teachers, or men in positions to give them a job.

As mentioned, there's a non-violent sexual assault, although in its context, I doubt it would predispose a man to have sex with a woman about lying about their identity.

Each time sex begins after a scene which is always humiliating to the woman (in my opinion as the viewer; the woman does not always object), it is consensual adult sex depicting consent and pleasure for both.

The only actual overlapping of sex and humiliation occurs when two women are requested to suck and lick

each other so that the men can choose the appropriate person for a job (a pun made in the movie), while the men look on. The women in the scene are shown as consenting and enjoying the sex.

This film is degrading and dehumanizing because it places the women in positions of subordination or humiliation, and runs against the principles of equality and dignity of all human beings: Butler, page 46, paragraph h.

The movie as a whole comes into the class of materials described by Justice Anderson in Regina versus Red Hot Video Limited, 1985, 18 C.C.C. (3d), 1, and quoted with approval in Butler, page 159, paragraph d.

> "Materials portraying women as a class as objects for sexual exploitation and abuse have a negative impact on the 'individual sense of self-worth and acceptance.'"

The movie also falls into a category of pornography which the Supreme Court holds could be suppressed by a proper application of the obscenity test, that's described in Regina versus Wagner, 1985, 43 C.C.C. (3d), 318, and cited with approval in Butler, page 162, paragraph a.

> "Women, particularly, are deprived of unique human character or identity and are depicted as sexual playthings hysterically and instantly responsive to male sexual demands. They worship male genitals and their own value depends upon the quality of their genitals and breasts."

However, to repeat, the sexual acts, themselves, taken in isolation, are not degrading.

Having found that the film is degrading and dehumanizing, I further hold that such a film may be obscene even though the degradation is not contained in the actual sex, itself. There are statements in the Butler judgment which suggest that the sex, itself, must be degrading.

> "Explicit sex which is degrading or dehumanizing may be undue if the risk of harm is substantial." Page 151, paragraph b.

However, other portions of the judgment and the judgment as a whole lead me to conclude that non-degrading sex in the same film as degrading treatment may be undue exploitation of sex. If there is some connection between the two, the material can be degrading, even if the isolated sex is not.

In Cherry Tricks, there is some connection between the degrading mental treatment and the sex. There is the false consent, and the sex is always related to the woman's servile and subordinate position in relation to the men. The non-degrading sex taken in isolation is so interwoven with the reasons the women are having sex that it becomes degrading, itself.

I must decide whether or not the community would tolerate others being exposed to this film on the basis of the degree of harm that may flow from such exposure. Having held that there is degrading sexual treatment, I am almost directed by the Butler decision to conclude that there is an appreciable risk of harm to society in the portrayal of such material.

> "It would be reasonable to conclude that there is an appreciable risk of harm to society in the portrayal of such material." Page 147, paragraph d.

Having concluded an appreciable risk of harm in this way, I conclude that the community would not tolerate others seeing this.

The classification of Cherry Tricks by the Ministry of Consumer and Commercial Relations, Ontario Film Review Board as an adult sex film, after eliminations, is presented by the Defence as raising a reasonable doubt as to whether the community would tolerate others seeing this movie.

This body, at least according to the minority judgment of Justice Wilson in Towne Cinema Theatres Limited versus the Queen, [1985] 1 S.C.R., 494 at 530, should be regarded as a tribunal with expertise on a community standard within the province.

This then is some evidence, though not conclusive, of the provincial standard, and in turn, of the elusive national standard. There is no evidence, however, as to the criteria used by the Board.

The Certificate of Classification presented, which was not completely interpreted, indicates eliminations, including all scenes of ejaculation on the face of the women. If I am viewing the cut version, at least one was missed. But I do not find Cherry Tricks obscene based on the ejaculation on to the face.

Not knowing the Board's criteria, I do not know why the Board classifies films which degrade women,

such as Cherry Tricks. I can only infer that it looks at the sexual scenes in isolation, and not the inter-connection between the sexual acts and the humiliation of each woman.

In any event, the Board classified the film before the decision in Butler. And while the classification is some evidence of Ontario community standards, it does not lead me to doubt my conclusion, that the Canadian community, as of the date of the charge, would not tolerate others seeing this objectionable sexist material.

Had the sex in Cherry Tricks been presented without the humiliation of women as its sole premise, or even with a lesser emphasis on the humiliation of women, such as in Talk Dirty to Me, I may not have found it obscene.

Conclusion

Count one is dismissed, but each of the defendants are found guilty of count two, but on the basis of the movie, Cherry Tricks, Exhibit Three, only.

Sentencing?

MR. TATULIS: Before I speak to sentencing, Your Honour, am I given that on count two--all defendants are convicted on count two?

THE COURT: I'm sorry, Counsel, I missed an issue, obviously. I'm open to--

MR. TATULIS: Well, on count one--I understand that count one was dismissed against Dimitrios Stefanou and the company, is that correct?

THE COURT: The movie is not obscene, so that's correct.

MR. TATULIS: Yes. So on count two, are all defendants--

THE COURT: May I have the information, please?

MR. TATULIS: --convicted? The company and the four defendants, are they all convicted on charge two, Your Honour, or only three of the defendants?

THE COURT: I'm sorry, I'm at a complete loss. I don't recall the issue being raised.

MR. TATULIS: No, I don't--

THE COURT: And of course, the whole case, of course, is that there was only one issue for determination.

MR. TATULIS: There's--I mean, you're--yes, but your judgment, you find Cherry Tricks obscene. Now--and, of course, finding it obscene, you're convicting all four defendants and the company?

THE COURT: If there's any basis for doubting--

MR. METZLER: I believe my friend--maybe if I can assist my friend--

MR. TATULIS: No, I just want to know who the conviction is against.

MR. METZLER: --is just seeking clarification, Your Honour.

MR. TATULIS: That's all.

THE COURT: Yes, but I don't want to convict someone against whom there's no evidence. The issue was never raised. I assumed that the case turned on the finding of obscenity.

MR. METZLER: It does--or did.

THE COURT: And that there was no question that the

five defendants had the tapes of count two in their possession.

MR. METZLER: Well, that was my understanding, as well. I believe my friend's just seeking a clarification as to what actually occurred, right?

THE COURT: Yes. Yes.

MR. TATULIS: I want to know--

THE COURT: Yes?

MR. TATULIS: --how many people I have to speak to sentence to, Your Honour.

THE COURT: All right, if there's nothing further, the answer is yes.

MR. TATULIS: All of them.

THE COURT: The dismissal on count one is based on the movie, not on the lack of the participation by two defendants.

MR. TATULIS: Yes, yes.

THE COURT: Can we deal with sentence today?

MR. TATULIS: So there--yes, yes, we can, Your Honour. So, therefore, the conviction lies against the company and three of the defendants, am I correct in that understanding?

MR. METZLER: Four of the defendants, I believe.

MR. TATULIS: Four of the defendants, all right. With regards to the defendants, Your Honour--

THE COURT: May I hear the Crown's position as a starting point; it might shorten the sentencing.

MR. METZLER: Well, the only person that I'm aware that may have a record, although my brief doesn't have--maybe my friend can assist me and save us time--the only one it indicates may have a record is Mr. Stefanou.

MR. TATULIS: Well, he does not have a record. He was sentenced some time ago, but it was a conditional discharge. And I think that was up a year--last July

MR. METZLER: Maybe if my friend could just advise the Court what it is, I won't need a recess to check into it. I'm content with what my friend says.

THE COURT: All right.

MR. TATULIS: Well, if we bring Mr. Stefanou up, I think he can tell us. I didn't act for him, but I knew that there was, there was--

MR. METZLER: Sorry?

MR. TATULIS: There was a record for, I think, it was breaking and entering, Your Honour. It had nothing to do with this thing. And I think he was--with a conditional discharge. And I think that he served his time. And it was up in July of last year, so, therefore, there would be no record at this particular time.

THE COURT: It couldn't be a conditional discharge for break and enter, but are you satisfied?

MR. METZLER: Yes. Maybe my friend could confer with his client--

MR. TATULIS: What was--

MR. METZLER: --rather than just speculate.

THE ACCUSED, STEFANOU: It was--the probation was finished a year ago, in July.

MR. TATULIS: It was probation?

THE ACCUSED, STEFANOU: Yeah, $1000.

THE COURT: A suspended sentence; all right.

MR. METZLER: It was a break and enter count?

THE ACCUSED, STEFANOU: Yes.
MR. METZLER: And nothing else?
THE ACCUSED, STEFANOU: Yes, sir.
MR. METZLER: All right, I'm content with that, Your Honour. My information is none of the others have a record.

It seems to have been--this operation was for profit, Your Honour, obviously. It would seem that the appropriate disposition is by way of fine, and if--if they can pay a fine.
THE COURT: Thank you.
MR. TATULIS: Well, I think--you know, I think a fine is probably fine, Your Honour, however, I think it should be taken into consideration, although you can't take officially induced error into consideration for the charge, itself, it certainly should be taken into consideration on sentencing.
THE COURT: All right.
MR. TATULIS: All right.
THE COURT: Nothing further about the appropriate sentence?
MR. TATULIS: Well, I'm suggesting a small fine. They are no longer in business.
THE COURT: Did the seizure--was that because of the arrest and the seizure of the goods?
MR. TATULIS: Yes, that was because of the arrest and the seizure. They have not received any of their property back from the property department. I would like to ask for an order to receive their property back, save and except Cherry Tricks, Your Honour. There was a substantial amount of goods

seized. I have the property certificate numbers. The receipts are tag numbers 8-8-3-9-2-1 to 8-8-3-9-4-6 inclusive.

THE COURT: All right, well, we'll get there. But Mr. Tatulis, they were only found guilty because of the one movie.

MR. TATULIS: They have been on--yes, I realize that.

THE COURT: The new standard, if I can call it that, is very new, is very recent, and it's elusive, as I said, and they've been put out of business. I'm open to a more lenient sentence, but you have to give me a basis on which to impose it.

MR. TATULIS: Well, I would think a very, very nominal fine, Your Honour. And even a smaller fine for the employees, you know. I'm suggesting in the neighbourhood of $100. fine, Your Honour. They have no previous record. The penalty for this, of course, is up to a $2,000. fine or six months in jail, for the individuals. For the company, it's up to a $25,000. fine.

I think--the company, I don't think is any longer in business, and of course, they have been inconvenienced and put out of business because of this. And because that they didn't think that they were out--they're not porn dealers. They were selling government approved product, government approved product, and I certainly think that that should be taken into consideration.

The two owners are--come forward; come forward, guys. These are the two owners, Mr. Delavinias and Mr. Tsetsekas.

THE COURT: And the other two are employees?
MR. TATULIS: The other two are employees.
THE COURT: May I--does the corporation have any funds?
MR. TATULIS: No, not to my knowledge. It's out of business.
THE COURT: Can I suspend sentence against the corporation?
MR. METZLER: I'm not opposed to that, Your Honour. It seems that a fine would be senseless really, if the corporation has no money.
THE COURT: Is that a legal sentence, suspended sentence against the corporation?
MR. METZLER: I believe so, Your Honour. I don't see why not. But maybe it should be reflected that if Your Honour is not imposing a fine against the company, the owners who are really the de facto embodiment of the company--
THE COURT: I intend to grant the employees discharges, so I shouldn't do that without hearing from you. I'm not trying to surprise you.
MR. METZLER: Well, I mean--no.
THE COURT: I'm thinking; I'm considering it.
MR. METZLER: Well, Your Honour, I believe Your Honour has properly characterized the situation we have here, that it's one tape. And it probably could be safely described as being near the borderline compared to potentially what could have been before the Court, and I wouldn't argue otherwise.

The only problem I might have with a conditional discharge is that this seems to be an enterprise

for profit, and I believe it's best disposed of with a fine. But other than that, I really have nothing further to add. Thank you.

THE COURT: Thank you.

MR. TATULIS: Well, in regards to a discharge, Your Honour, Mr. Kyriazoglov is--he's 20 years old. He's single. He lives at home with his parents and he is presently taking a course, a securities course. And Mr. Stefanou is 20 and he's single. He lives at home with his parents, but he is just--he's out employed, that's all, Your Honour. He's working. And--but he has no intention of going on to school. But I think in view of the fact that they are employees, I think a discharge would be in order.

THE COURT: Sentence is suspended against 931536 Ontario Incorporated. I'm being advised that it has no funds. Against the two owners of the company, Mr. Stefanou and Mr. Kyriazoglov--

MR. TATULUS: No, Mr. Delavinias and Mr. Tsetsekas are the owners, Your Honour.

THE COURT: Mr. Delavinias and Mr. Tsetsekas, they're each fined $100. I'll give reasons as a whole, but the two employees, Mr. Stefanou and Mr. Kyriazoglov are granted absolute discharges.

MR. TATULIS: Thank you very much, Your Honour.

THE COURT: Let me just give reasons.

MR. TATULIS: Okay, thanks.

THE COURT: Charged with selling and having in their possession eight videos alleged to be obscene, the accused have been found to have had

in their possession only one video that was actually obscene. There was a trial but the accused did not testify, and it was presented in an orderly and expeditious manner.

Crown Counsel acknowledges, following my reasons, that the movie found to be obscene was on the border. The section takes away any defence of good motives and ignorance of the nature or presence of the matter. And the clearance by the Ontario Film Board could lead to confusion, at the least.

The enterprise was for profit, but the entry of a criminal conviction, I find, against the two owners, in view of the particular film which was found to be obscene, is sufficient to denounce the possession of this type of material for the purposes of sale. Once the criminal convictions are entered against the owners, there's nothing against the public interest in granting an absolute discharge to the two young employees. Thank you.

MR. TATULIS: Thank you, Your Honour.

THE COURT: Do you need time to pay the fine?

MR. TATULIS: Oh, the usual, I think; 15 days.

THE COURT: Thirty days to pay.

MR. TATULIS: Thirty days to pay, thank you.

THE COURT: Your welcome. Thank you very much.

MR. METZLER: Thank you, Your Honour.

THE COURT: Thank you.

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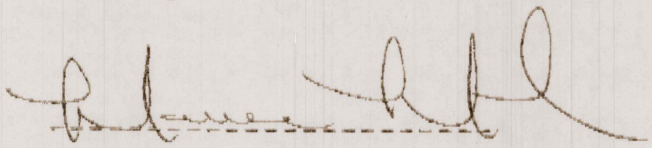
This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my skill and ability.



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